

REMARKS

Claims 1-8 are pending in the Application.

Claims 1-8 stand rejected.

I. DRAWINGS

The Examiner has asserted that the yes path from step 102 to step 103 should actually be a no path, and the no path from step 102 to step 104 should actually be a yes path. Applicants disagree; when an update message is present (step 102), that is when the verification process of steps 103 and 105 is performed.

II. REJECTIONS UNDER 35 U.S.C. § 103

Claims 1-8 stand rejected under 35 U.S.C. § 103 as being unpatentable over *Miller* (U.S. Patent No. 6,308,265). In response, Applicants respectfully traverse this rejection. As the Examiner is well aware, for a claim to be rejected as obvious over the cited prior art, each and every limitation within the claim must be either taught or suggested by the prior art references, and in this case only one reference. MPEP § 2143.03. Claim 1 recites the step of determining whether a buffer contains a message indicating that a BIOS image for the data processing system was previously updated. First, the Examiner has not even addressed this claim limitation at all. For this reason alone, the Examiner has failed to prove a *prima facie* case of obviousness in rejecting claim 1. Secondly, *Miller* does not teach or suggest a message being stored in a buffer indicating that a BIOS image has been previously updated, or the step of determining whether such a buffer contains such a message.

Claim 1 then recites the step of performing a signature verification on a remainder of the BIOS image. Again, the Examiner has failed to specifically address this claim limitation. This limitation specifically recites that a signature verification is performed. The Examiner has not addressed the limitation of a "signature

verification." Instead, the Examiner merely asserts that *Miller* teaches the performance of a validation of the BIOS image. These are not the same. Next, claim 1 recites proceeding with a re-boot of the operating system software if the signature verification correctly verifies the remainder of the BIOS image. Again, the Examiner has not addressed all of this claim limitation. *Miller* does not teach or suggest a reboot of the operating system proceeding if a signature verification correctly verifies the remainder of the BIOS image. Column 6, lines 44-46 of *Miller* does not state this, but instead merely asserts that step 370 is performed if there is a match between the boot block codes in the first and second regions. Step 370 is not a rebooting of the operating system software, but is merely the step of protecting the first block.

The Examiner then goes on to admit that *Miller* does not teach that the BIOS image is validated by verifying a signature, but asserts that this would have been obvious since *Miller* suggested there are many ways to validate the BIOS image. Since *Miller* does not specifically teach or suggest using a signature verification, the Examiner cannot merely assert that this would be obvious. Furthermore, all that column 6, lines 38-40 teaches or suggests is that any known manner for comparing data stored in different regions may be performed for comparing the boot block images in the first and second regions. The present invention recites the determination if a message exists indicating that there has been a BIOS image update and then performing a signature verification if there is such a message. This is not in any way taught or suggested within *Miller*.

With respect to claim 2, the Examiner asserts that this limitation is found in column 6, lines 47-65. *Miller* teaches that if there is not a valid comparison of the boot block code in the first and second regions, then the process returns to step 340 to erase the first block and update the first block. This does not teach or suggest not proceeding with the reboot of the operating system software if the signature verification does not correctly verify the remainder of the BIOS image. There is no teaching or suggestion of any rebooting of the operating system software, and

therefore, there can be no teaching or suggestion of a lack of proceeding of this process.

With respect to claim 3, the Examiner has completely ignored the step of storing the message into the buffer responsive to the step of performing the update to the BIOS image. For this reason alone, the Examiner has failed to prove a *prima facie* case of obviousness in rejecting claim 3. Furthermore, since there is no determining step of claim 1 taught or suggested within *Miller*, as asserted by Applicants above, there can be no teaching or suggestion of the step of performing an update to the BIOS image previous to the determining step in *Miller*.

With respect to claims 4 and 5, the Examiner merely asserts that these claims are rejected for the same reasons as given above with respect to claims 1-3. The problem with such an assertion by the Examiner is that claims 4-5 recite limitations not recited within claims 1-3. Claim 4 recites a means for storing a message into a memory location wherein the message indicates that the BIOS image has been updated. The Examiner has not in any way addressed this claim limitation. For this reason alone, the Examiner has failed to prove a *prima facie* case of obviousness in rejecting claim 4. Furthermore, *Miller* does not in any way teach or suggest the storing of a message into a memory location wherein the message indicates that the BIOS image has been updated.

Claim 4 also recites that during a subsequent reboot of the data processing system, there is a means for determining an existence in the message. The Examiner has completely failed to address this claim limitation. For this reason alone, the Examiner has failed to prove a *prima facie* case of obviousness in rejecting this claim. The last two limitations of claim 4 are patentable over *Miller* for similar reasons as given above with respect to claim 1.

Claim 5 is patentable over *Miller* for similar reasons as given above with respect to claim 2.

Claim 6-8 are patentable for the same reasons as given above with respect to claims 1-3.

III. CONCLUSION

As a result of the foregoing, it is asserted by Applicants that the remaining Claims in the Application are in condition for allowance, and respectfully request an early allowance of such Claims.

Applicants respectfully request that the Examiner call Applicants' attorney at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining problems.

Respectfully submitted,

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